IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.300 OF 2007

Shri Gurdial Singh ...Petitioner

Versus

M/s.Arudatta Triotex Engineers
Pvt Ltd. & Anr. ...Respondents

Shri A.K.Tripathi for the Petitioner.

Shri R.S.Apte for the Respondents.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 03, 2007.

P.C.:

1. Heard Advocate for the Petitioner. The Petitioner is the first Defendant and the first Respondent is the Plaintiff. By the order impugned in this Petition under Article 227 of the Constitution of India, an Application made by the Petitioner at Exhibit 19 has been rejected. The Application at Exhibit 19 was made purportedly under section 21(1) read with section 151 of the Code of Civil Procedure, 1908 praying that the plaint be rejected for want of territorial jurisdiction. The said Application has been rejected by the impugned order by observing that the Application is not tenable under section 21(1) of the Code of Civil Procedure, 1908.

2. The learned counsel for the Petitioner submitted that the title of the Application at Exhibit 19 was wrong and in substance it was an Application under section 9A of the said Code. He submitted that as there is an Application for temporary injunction pending, the trial Court ought to have treated the said Application as one under section 9A of the said Code. He, therefore, submitted that issue of jurisdiction needs to be decided.

3. I have considered the submissions. In view of the decision of this court in the case of **Solapur Social Urban Co-operative Bank Ltd Vs. Nigam A. Mannan Beskar (2006(4) Bombay Cases Reporter Page 217)**, section 9A could not have been invoked by the Petitioner as the view taken by this Court is that section 9A has been repealed by virtue of the amendment to the Code of Civil Procedure, 1908 carried out in the year 2002. There is a second reason why the said contention could not have been accepted. The prayer in the Application at Exhibit 19 was for rejection of the plaint and not for framing a preliminary issue of jurisdiction. Section 21(1) of the Code could not have been invoked for rejection of the

plaint.

4. Therefore, the trial Court was justified in rejecting the Application and no case is made out for interference in this Petition. However, it must be clarified that issue of jurisdiction raised by the Petitioner is expressly kept open and the said issue will have to be decided by the trial Court at an appropriate stage in accordance with law.

5. Subject to what is stated above, Writ Petition is rejected. All contentions of the parties on merits are expressly kept open.

JUDGE